

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

TIMOTHY GUMM,

Plaintiff,

v.

ERIC SELLERS, *et al.*,

Defendants.

Case No. 5:15-CV-41-MTT-CHW

PLAINTIFF’S MOTION FOR A STATUS CONFERENCE

Plaintiff Timothy Gumm respectfully requests that the Court schedule, at its earliest convenience, an in-person status conference to discuss a number of recent developments in this litigation. Counsel for Defendants do not oppose Mr. Gumm’s request for a status conference.

Mr. Gumm requests a status conference to discuss the following:

1. His impending filing, with the consent of the Defendants, of a Third Amended Complaint adding two other named Plaintiffs (Robert Watkins and Johnny Mack Brown) and substituting some of the Defendants sued in their official capacity;
2. The expert report of Dr. Craig Haney, which counsel for Mr. Gumm served on Defendants on May 2, 2018 (and which counsel will move to file under seal in unredacted form);
3. The status of finalizing a redacted version of Plaintiff’s expert’s report for filing on the public record;

4. Defendants' unopposed request for a 60-day extension of the discovery period in which the parties will conduct additional depositions;
5. The possibility of a court-led settlement conference; and
6. Setting an expedited schedule for briefing on Mr. Gumm's anticipated motion for preliminary injunction.

Brief Procedural Background

By way of background, the Court appointed the Southern Center for Human Rights ("SCHR") to represent Mr. Gumm on October 27, 2016. On Mr. Gumm's behalf, SCHR filed a Second Amended Complaint on behalf of a putative class of all prisoners held in the SMU on March 11, 2017, and moved for class certification on March 13, 2017. (Dkt. Nos. 73, 76.) On April 28, 2017, attorneys from the law firm of Kilpatrick Townsend & Stockton LLP, joined as co-counsel for Mr. Gumm and the putative class. The parties have engaged in extensive discovery, including the depositions of nine of the Defendants.

On August 4, 2017, Defendants notified counsel that Mr. Gumm had been transferred out of the SMU to Georgia State Prison. In January 2018, counsel for Mr. Gumm provided the State with a draft of the Third Amended Complaint, adding two additional named Plaintiffs and substituting several of the Defendants sued in their individual capacity. Around this same time, the parties also engaged in settlement discussions.

On May 8, 2018, counsel for Defendants consented to Mr. Gumm's filing of the Third Amended Complaint.

Dr. Haney's Expert Report

Following Dr. Haney's two-day visit to the SMU on October 23-24, 2017, Mr. Gumm requested, and the State produced, extensive information regarding residents of the SMU. After a short informal extension, counsel for Mr. Gumm served Defendants with Dr. Haney's expert report on May 2, 2018. Mr. Gumm separately will move to file under seal an unredacted copy of Dr. Haney's report.

Dr. Haney, who is perhaps the most qualified expert working in this area, comes to a number of deeply troubling conclusions in his report. Dr. Haney characterized the SMU as "one of the harshest and most draconian . . . facilities I have seen in operation anywhere in the country," Haney Report, at 9, and its prisoners as "among the most psychologically traumatized persons I have ever assessed in this context." Haney Report, at 10. Dr. Haney concludes: "The unusually severe and deprived conditions, practices, and procedures that exist at [the SMU], the uncertainty prisoners experience over whether and how they can obtain or hasten their release, the very long duration of the SMU sentences that prisoners are required to serve, and the disproportionate number of mentally ill prisoners who are housed in this unit represent a truly toxic and extremely dangerous combination of factors and forces." Haney Report, at 11. Dr. Haney also offers the dire warning that that individuals now in the SMU remain "at grave risk of

harm,” which “may be irreversible and even fatal.” *Id.* at 9-10. Two SMU inmates committed suicide in 2017.

Counsel for Mr. Gumm provided the State with a redacted version of Dr. Haney’s report on May 3, 2018, with a request that Defendants promptly consent to the redactions so Mr. Gumm could file a redacted report on the public docket. After initially requesting a May 11 deadline for responding to the proposed redactions, Defendants requested an additional week (through May 18) to provide their response. To the extent the parties have any disagreement as to the redactions, Mr. Gumm requests that those issues be resolved expeditiously, so that the report can be filed on the public record and made available to the other SMU inmates litigating similar claims.

Defendants’ Unopposed Request for a 60-day Discovery Extension

Class certification discovery currently is set to expire on May 21, 2018. (Dkt. No. 133.) On April 26, 2018, Defendants asked to depose Mr. Gumm. On May 8, 2018, Defendants asked to depose Dr. Haney and the two new named Plaintiffs identified in the Third Amended Complaint.

Counsel for Mr. Gumm also will be conducting four depositions (of Otis Stanton, Jack Koon, Michael Cannon, and Karen Forts). These four depositions originally had been scheduled for December 20, 2017, and January 4, 2018, but had been postponed at Defendants’ request, given the parties’ settlement discussions. Counsel for Mr. Gumm also may be taking a 30(b)(6) deposition of the Georgia Department of Corrections.

To schedule and complete these depositions, Defendants requested, and Mr. Gumm agreed not to oppose, a sixty-day extension of the discovery period.

The Possibility of a Court-Led Settlement Conference

As a result of the settlement discussions in late 2017 and early 2018, counsel for Mr. Gumm believe there is a real possibility that this case could be settled. In light of the conclusions reached by Dr. Haney and continuing reports received by SCHR of deteriorating conditions at the SMU, however, the need for meaningful settlement discussions has become urgent. Mr. Gumm respectfully submits that a court-supervised settlement conference may provide the structure needed for the parties to resolve their remaining differences as to acceptable modifications of the conditions at the SMU.

Mr. Gumm's Anticipated Motion for a Preliminary Injunction

In light of the grave risk of harm to the prisoners held at the SMU identified in Dr. Haney's report, counsel for Mr. Gumm wrote to the State on May 3, 2018, asking its clients to immediately implement three policy and practice changes at the SMU: (1) increased out-of-cell time; (2) a fourteen day limit on prisoners being held in the two most restrictive wings of the SMU (E- and F-wing); and (3) psychological evaluations for all prisoners (and an agreement to move people suffering adverse psychological effects out of the SMU). Following Defendants' initial response to Mr. Gumm's request on May 8, 2018, counsel for Mr. Gumm has agreed to a deadline of May 21, 2018, for Defendants to address whether and to what extent they will implement these policy and practice changes.

Although Mr. Gumm remains hopeful Defendants will voluntarily and immediately implement this urgently-needed relief, if Defendants refuse to do so, Mr. Gumm will have no choice but to move for a preliminary injunction. Mr. Gumm accordingly requests the parties discuss an expedited briefing schedule on any such motion for preliminary injunction at the status conference with the Court.

WHEREFORE, Mr. Gumm respectfully requests that the Court schedule an in-person status conference at its earliest convenience to address the issues discussed above.

Respectfully submitted, May 14, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 14, 2018, all counsel of record who consented to electronic service are being served with a copy of this document via the Court's CM/ECF system.

/s/ Sarah Geraghty
Attorney for Plaintiff